IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9281 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAUDHARY JESANGBHAI MOGHJIBHAI

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 9281 of 2003

MR JB DASTOOR for Petitioner No. 1

Ms. Darshana Pandit, AGP for Respondent No. 1-2

SERVED BY AFFIX.(N) for Respondent No. 3

MS TRUSHA K PATEL for Respondent No. 3/1-3/2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 26/09/2003

ORAL JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India seeking direction to the respondent No.2 i.e., Mamlatdar and Agricultural Lands Tribunal, Dascroi Taluka, Ahmedabad, to decide the petitioner's application under Section 70(b) read with Section 22(o) of the Bombay Tenancy and

Agricultural Lands Act, 1948 (for short "the Act") in accordance with law and after holding trial as per the procedure laid down under the law. The petitioner has also prayed for an interim relief to the effect that the respondents may be directed to maintain status-quo and not to proceed further to allot commercial shops built upon the land in dispute to any person.

2. It is the case of the petitioner that the petitioner is a farmer having engaged in cultivation of different seasonal crops. The petitioner is having tenancy rights over the land bearing Survey No. 185/1 of Village Acher, District-Ahmedabad and cultivating the said land since 1995-96. The petitioner was dispossessed from the said land by the respondent and therefore the petitioner had filed an application on 22.4.1999 before the Mamlatdar & ALT, Dascroi under Section 70(b) of the Act for deciding the tenancy rights of the petitioner. The petitioner has also filed an application for interim relief under Section 70(nb) of the Act. However, the petitioner's application for interim relief was rejected by the Mamlatdar & ALT, vide his order dated 29.9.1999. The petitioner has also alleged that the Mamlatdar also rejected the application under Section 70(b) of the Act without following trial or without adopting rules and procedures as laid down under the Mamlatdar's Court Act. Being aggrieved by the said order of the Mamlatdar & ALT, the petitioner had filed Tenancy Appeal No. 122 of 1999 before the Deputy Collector, who, vide his order dated 2nd February 2000, has confirmed the order of the Mamlatdar and ALT. Being further aggrieved by the said order of the Deputy Collector, the petitioner had filed Revision Application No. TEN/B.A./65/2000 before the Gujarat Revenue Tribunal, which was rejected by the Tribunal vide its order dated 31st January 2001 and the orders passed by the Mamlatdar as well as the Deputy Collector were confirmed.

3. Being further aggrieved by the said order of the Tribunal, the petitioner has filed Special Civil Application No. 1371 of 2001 and it was contended by the petitioner before this Court that the application made by the petitioner under Section 70(b) of the Act is required to be tried in the manner prescribed under the Mamlatdar's Court Act, 1906. However, without following the due procedure, in the course of hearing of Tenancy Application under Sec. 70(nb), the Mamlatdar & ALT had decided the entire application under Sec. 70(b) of the Act and since the same was the manifest error committed by the Mamlatdar and since the orders passed by the Deputy Collector as well as the Gujarat Revenue Tribunal

based on the said order of the Mamlatdar, this Court has allowed the said Special Civil Application and directed the Mamlatdar to decide the petitioner's application under Section 70(b) of the Act in accordance with the procedure as laid down in the Mamlatdar's Court Act.

4. Since the order of this Court dated 26.2.2001 passed in SCA No. 1371 of 2001 was based on an incorrect typed copy of the order passed by the Mamlatdar & ALT, wherein instead of Section 70(nb), at all places Section 70(b) was mentioned and because of that, this Court has taken the view that the main application preferred by the petitioner under Section 70(b) of the Act was also disposed of. The present respondent No.3 has therefore filed Letters Patent Appeal No. 356 of 2001 before this Court challenging the order passed by the learned Single Judge of this Court in SCA No. 1371 of 2001. While disposing of the said LPA on 25.6.2001, the Division Bench has observed that certified copy of order dated 21st October 1999 passed by the Mamlatdar & ALT in Tenancy Case No. 25/99/70 indicates that what is disposed of is application submitted by the respondent No.1 (present petitioner) under Sec. 70(nb) of the Act and not the application submitted by respondent No.1 (present petitioner) under Section 70(b) of the Act. The Division Bench has further observed that there is consensus between the learned counsel for the parties that the judgment delivered by the learned Single Judge, which proceeds on the footing that the application submitted by the respondent No.1 under Section 70(b) of the Act is disposed of, deserves to be set aside. Even while disposing of the said LPA, the Division Bench has held that the authorities below have concurrently held that the respondent No.1 (present petitioner) is not in possession of the disputed land and he is, therefore, not entitled to relief under Section 70(nb) of the Act. The Division Bench has further held that the concurrent finding of fact recorded by the Mamlatdar and as confirmed by the Deputy Collector and the Gujarat Revenue Tribunal cannot be interfered with by the Court while hearing the petition under Article 226 of the Constitution. The Division Bench has, therefore, not found any merits in the petition and while allowing the LPA, has dismissed the petition itself, instead of sending it back to the learned Single Judge for deciding the said petition on merits. The Division Bench has also directed the Mamlatdar to dispose of the application under Section 70(b) of the Act as early as possible and without any avoidable delay.

5. Mr. JB Dastoor, ld. advocate appearing on

behalf of Mr. Anand Patel, ld. advocate appearing for the petitioner submits that despite the direction given by this Court to the Mamlatdar to dispose of the application filed by the petitioner under Section 70(b) of the Act as early as possible, the Mamlatdar is not taking up the matter only with a view to facilitate the respondent No.3 to carry out and complete the construction of the commercial complex. He has further submitted that despite the fact that the application under Sec. 70(b) of the Act is pending the commercial complex is built-up by respondent No.3 on the disputed land and if the respondent No.3 is not restrained from making any further construction for allotting shops to the persons, the petitioner's application under Section 70(b) of the Act which is pending before the Mamlatdar would be frustrated and it is only for this purpose, the present petition is filed by the petitioner before this Court seeking direction for early disposal of the application under Section 70(b) of the Act and seeking prayer for stay against the respondent No.3 restraining them from carrying out any further construction and/or allotting shops to the members etc. Mr. Dastoor has further submitted that the Mamlatdar is not deciding the application intentionally and he has joined hands-in-glove with the respondent No.3 and because of certain politicians belonging to the party-in-power are involved in the present matter, the petitioner's request for early disposal and the direction of this Court, are not complied with. Mr. Dastoor has, therefore, submitted that the present petition be admitted and the stay as prayed for be granted.

6. In support of his submissions, Mr. Dastoor relied on the decision of this Court in the case of Ibrahim Shah Mohamad And Ors. vs. Noor Ahmed Noor Mohamed and Ors - (1983) 24 (2) GLR, and drawn the attention of this Court to the following observations:

> "The Court in the instant case is seized of the matter pertaining to the property. Pending the litigation, the property was transferred and, therefore, the respondent had come on record. The matter is still to go back to the trial Court for final decree. If during that period property would change hands with any other persons, would it not be necessary either for the plaintiff or somebody else to bring all parties on record, meaning thereby, delaying further proceedings for bringing them on record, having their say etc., and thus delaying the passing of final decree ?

> The Court should always lean towards seeing that there is no multiplicity of proceedings and also that the proceedings should go on as far as possible so smooth that the decision can be arrived at between the parties who are on record as early as possible. In this case, therefore, it is proper that the injunction should be granted."

To justify the filing of the present petition before this Court, Mr. Dastoor has relied on the decision of the Hon'ble Supreme Court in the case of Daya Singh Vs. Union of India and Others - AIR 1991 SC 1548, wherein the Hon'ble Supreme Court has observed that "It is true that while rejecting the earlier prayer of the petitioner on October 11, 1988 all the relevant considerations were taken into account and the petitioner cannot be permitted to raise the same plea, once rejected, by repeated petitions. But this does not deprive the petitioner's right to renew the prayer on fresh circumstances arising later and, therefore, not considered. While applying the ratio of this decision to the facts of the present case, Mr. Dastoor has submitted that although the earlier proceedings were culminated in confirmation of the order passed by the Mamlatdar rejecting the petitioner's application for interim relief under Sec. 70(nb) of the Act, by the Division Bench of this Court, in view of the new circumstances in the form of construction having been made by the respondent No.3 and the allotment of shops having been made to other persons, the 2nd petition is quite justified making prayer for stay against the respondent No.3, during the pendency of his application under Sec. 70(b) of the Act, before the Mamlatdar.

7. Ms. Trusha K. Patel, ld. advocate appearing for the respondent No.3 submitted that the petitioner has suppressed the material facts and has deliberately tried to mislead this Court by misrepresentation regarding the important and material facts. She has further submitted that all disputes raised by the petitioner qua his injunction application under Sec. 70(nb) of the Act have been dealt with and decided against him by the Division Bench of this Court in LPA No. 356 of 2001 and yet the petitioner has deliberately produced an erroneous typed copy of the order of the Mamlatdar, at Annexure 'C' to this petition. In earlier proceedings before this Court, it was brought to the notice of all concerned that in the original order of the Mamlatdar, earlier indication of Section 70(nb) of the Act was made and it was only erroneous typed copy of the said order indicating Section

70(b) instead of Sec. 70(nb), that the ambiguity was corrected. She has further submitted that in earlier proceedings, the ld. advocate appearing for the petitioner has tendered an unconditional apology to the Court and conceded the facts on record. Despite this fact, the petitioner has again produced the said erroneous typed copy before this Court along with the present petition and thereby the petitioner has tried to mislead this court. She has further submitted that the petitioner has never made any representation before the Mamlatdar for conducting his case. On the contrary, the petitioner has tried to take advantage of his own wrong. She has pointed out that on conclusion of Sec. 70(nb) proceedings the Mamlatdar fixed first date of hearing on 27.8.2001 for recording of deposition of the petitioner . However, neither the petitioner nor his advocate was present and therefore the Mamlatdar had to adjourn the matter upto 4.9.2001. On that date also, the petitioner was absent when the matter was called out and therefore the matter was adjourned to 24.9.2001. She has further submitted that the matter was adjourned for 28 times because of the absence of the petitioner till 21.7.2003 and because of that the petitioner's deposition could not be recorded by the Mamlatdar. She has, therefore, submitted that the petitioner is not entitled to claim any relief from this court as it is the petitioner who is not cooperating with the Mamlatdar for early disposal of the application under Sec. 70(b) of the Act.

8. Even with regard to the merits of the matter, Ms. Trusha Patel relied on the affidavit-in-reply filed in earlier proceedings, i.e., SCA No. 1371/2001 wherein it was contended that the disputed property in question was with the petitioner since long and no cultivation was ever made by the petitioner. It was further contended that the petitioner was staying at Gandhinagar, his name was also included in the voters' list of Gandhinagar and ration card was also issued showing his residential address at Gandhinagar. It was also contended in the said affidavit-in-reply that the land was included in the TP Scheme No. 23 of Village Acher on 8.12.1981 and final plot No. 441 was allotted in lieu of the original plot which is in dispute in the present proceedings. It was further contended that the land was converted for residential and commercial use by the City Deputy Collector by his order dated 17.11.1974. It was also contended in the said proceedings that in the year 1999 under Urban Land, Ceiling & Regulation Act, 1976 (ULC Act) the petitioner had made representation before the concerned officer wherein he had submitted a power of attorney purported to have been executed by the present

respondent No.3 allegedly appointing him as the power of attorney holder. However, the said power of attorney was concocted one and therefore a criminal complaint was lodged against him which is still pending for investigation. It is, therefore, made clear that even in 1999, the petitioner's case before the authority was that he was power of attorney holder of the landlord and hence there is no question of claiming tenancy over the land in question. It was further contended that the land is in the limit of Ahmedabad Municipal Corporation and it was also made subject to ULC Act and hence there is no question of applicability of the Tenancy Act.

9. On the basis of the above submissions made in earlier proceedings as well as in the present petition, Ms. Patel has strongly submitted that the petition deserves to be dismissed with heavy compensatory costs as on the one hand the petitioner is abusing the process of law by filing petitions before this Court repeatedly on the same cause of action whereas on the other hand the petitioner does not remain present before the Mamlatdar for disposal of the application under Section 70(b) of the Act.

10. Ms. Pandit, the learned AGP has also supported the case of respondent No.3 and submitted that pursuant to the order passed by this Court in SCA No. 1371 of 2001, the petitioner's application under Section 70(b) of the Act was fixed for hearing on various dates and yet the matter could not be proceeded with, as the petitioner was not remaining present. She has further submitted that the petitioner has made very wild allegations against the responsible officers contrary to the facts found on record as on the one hand the petitioner is not remaining present before the Mamlatdar for adjudication of his application under Section 70(b) of the Act, and on the other hand the petitioner is alleging that the authorities are providing time to the respondents so that the construction work could be over on the disputed land. She has further submitted that inspite of various dates given, the petitioner has chosen not to appear before the authority, and since the matter is at the stage of taking deposition of the petitioner, because of his absence, the case has not been proceeded with. She has further submitted that instead of making wild allegations against the officers, the petitioner should appear before the Mamlatdar and give deposition so that the case may be adjudicated upon in accordance with law. In view of these facts, Ms. Pandit submits that the petitioner does not deserve for any relief and the petition is liable to be dismissed with costs.

11. From the foregoing facts, what emerges is that the petitioner has again approached this Court by way of the present petition seeking similar prayer, under the guise that certain developments had taken place after the decision having been rendered by the Division Bench of this Court in LPA No. 356 of 2001. However, while approaching this Court, the petitioner has again committed the same mistake which was committed by him earlier and obtained the order in his favour from the learned Single Judge of this Court, by producing an incorrect order of the Mamlatdar. Despite there being detailed discussion in the order of the Division Bench and despite the fact that an unconditional apology was tendered before the Court on behalf of the petitioner, the same was not taken care of while filing the present petition before this Court. Not only this, even at the time of hearing and making submissions before this Court, Mr. Dastoor has not drawn the attention of this Court to the said mistake. The Court's attention was drawn to this fact by Ms. Trusha Patel, ld. advocate appearing for respondent No.3 when her turn came to give reply to the petition. It is in this context, the Court takes very serious view of the matter, and carries an impression that it is not a simple, genuine or a bonafide mistake, as contended by Mr. Dastoor subsequently. It is an intentional, malicious act on the part of the petitioner to produce such false document before the Court and to get the order in his favour. The petitioner has also made another misrepresentation in the petition. It is the case of the petitioner that despite the direction given by this Court for early disposal of the application under Section 70(b) of the Act pending before the Mamlatdar, the same is not taken up for hearing. As a matter of fact, as pointed out to the Court by Ms. Trusha Patel, ld. advocate appearing for the respondent No.3 as well as Ms. Pandit, the ld. AGP appearing for respondents No. 1 and 2 on the basis of the respective affidavits filed by the said respondents that despite several opportunities having been given, the petitioner is not remaining present before the Mamlatdar and it was pointed out to the Court that numerically 28 adjournments were given by the Mamlatdar and the petitioner had not remained present for giving his deposition in the matter. It is nothing but wilful distortion of facts. On these two grounds, the petition is liable to be dismissed, and, on these facts, the authorities relied on by the petitioner would not render any assistance to him, as in the present case, the petitioner himself is liable for the delay. It is because of his own absence that the proceedings before the Mamlatdar could not be decided

despite there being direction from this Court. The petitioner has no right to make any grievance against his own wrong. Moreover, the petitioner has not produced any material or documentary evidence showing that new developments had taken place after the Division Bench of this Court has decided the Letters Patent Appeal. Merely submitting on the basis of the false statements made in the petition would not stretch the case of the petitioner any further. Number of documents have come on record in the earlier proceedings which have undisputedly proved and demonstrated that the petitioner was not in possession of the land in question and that no cultivation was made by him, and that the land was included in the Town Planning Scheme of Village Acher and that it was also included within the limits of Ahmedabad Municipal Corporation, so on and so forth.

12. In the above backdrop of the matter, this Court has no other alternative but to dismiss the petition with costs of Rs. 5,000/= each to the respondents No. 2 and 3. The petition is accordingly dismissed. Notice is discharged with costs, as stated above.

rmr. [K.A. Puj, J.]